

1896.  
July 15  
and 21.

VON HAGT v. HARMANIS *et al.*

*P. C., Ratnapura, 12,204.*

*Sale of arrack contrary to tenor of license—Non-liability of tavern-keeper—Liability of licensed renter—Ordinance No. 13 of 1891, s. 9, sub-section 3.*

Where a tavern-keeper, appointed by the licensee of a tavern to sell arrack for the licensee's benefit, sells arrack contrary to the tenor of the license, the liability to punishment under sub-section 3 of section 9 of Ordinance No. 13 of 1891 attaches to the licensee, and not to the tavern-keeper.

THE accused, who was a tavern-keeper appointed by the licensee of the tavern, was convicted of the offence of "disposing of arrack contrary to the tenor of the license," under sub-section 3 of section 9 of Ordinance No. 13 of 1891, and was sentenced to one month's rigorous imprisonment. The accused appealed on the point of law that he was not liable to be convicted.

*Dornhorst (Fernando and Jayawardena with him)*, for appellant. The conviction is wrong. It is the licensee and not his servant who is liable. This belongs to a class of offences for which the master is criminally responsible for his servant's acts. He cited *Commissioners of Police v. Cartman (1896)*, 1 Q. B. 655.

*Seneviratne*, for respondent. The master is not criminally punishable for his servant's acts whatever other liability he may incur. The words of the Ordinance are sufficient to cover every person who sells arrack contrary to the tenor of the license.

*Cur. adv. vult.*

21st July, 1896. LAWRIE, J.—

This appeal succeeds on the point of law. Neither of the accused was the licensee, who, by the terms of his license, was bound to sell arrack at Rs. 4·48, and at no other price.

The accused were authorized by the licensee to sell for him and for his benefit, and if they sold arrack for a less price than Rs. 4·48 the licensee, and not the agent, is liable to punishment.